

DECLARATION OF DAYON HIGGINS

1. I, Dayon Higgins, have personal knowledge of the following and can, if called, testify to the same in the court of law.

2. As a parent of a special education student, I am aware of the stress, frustration, confusion, and the expenditure of time and money in seeking an appropriate education for a special education student.

3. Because of the difficulties that I experienced in seeking a Free And Appropriate Public Education for my child, I now help other parents to understand their rights to a Free and Appropriate Public Education for their special education child. I also offer support by attending IEP's with the parents and I provide them with referrals when needed to help them obtain educational opportunities for their child.

4. This declaration is provided in support of the application for temporary restraining order and preliminary/permanent injunction in United States District Court Case SCCA 08 CC 226 W (AJB).

5. In November of 2006, I personally spoke at an open meeting held by the U.S. Department of Education about my concerns about special education children being abandoned by California's judicial system and IDEA 2004 being nullified by the school district JPA's. I included 6 OAH cases in which parents were stripped of their rights to resolve educational conflicts due to the lack of trained ALJ's. Mr. Gavin Payne from CDE was present during this open meeting with one other representative from CDE. I personally gave Mr. John Hager, Assistant Secretary OSLERS and Alexa Posney, Director, a copy of my letter of concerns about the lack of procedural safe guards. I also read the letter at the open meeting so it would be put on record.

6. On July 9, 2007, I sent Via Facsimile to John Hager with my concerns about California's Lack of Procedural Rights and my concerns that parents currently have little chance of prevailing in due process and that Districts are aware of this trend thus causing IEP's to become an environment to intimidate, and ostracize the parents.

7. In a letter dated July 10, 2007 I wrote to Rebecca A. Parker, Ph.D., Education Programs Consultant about my concerns regarding OAH. I received a letter dated July 27, 2007 stating that the California State Board of Directors have no authority over OAH or District Activities.

8. On August 2, 2007 I, e-mailed Shane Berli from CDE my request for a meeting with CDE to discuss my concerns about the violations of IDEA, which denied educational services to hundreds of disabled children. Mr. Perry Williams the liaison for OSEP and CDE recommended that we meet with Ms. Mary Hudler, Director of Special Education in California. Instead we were asked to meet with Mr. Berli.

9. On August 22, 2007 I, again contacted Mr. Hager, with my concerns about the lack of due process and the length of time it was taking CDE to set a meeting date for me and three other student representatives to discuss our concerns about the violations of IDEA.

10. On September 11, 2007, along with three other student representatives, Ellen Dowd, Tania Whiteleather, and John Nolte, I met with Jim Bellotti, Shane Berli, and Greg Rousseve, all from CDE. We discussed the contract in which administrative judges were required to have eighty hours of training yearly. Mr. Bellotti argued with us

until it was pointed out in the contract. That ALJ's are to have eighty hours of training annually.

11. Another concern that was brought up was the 45-day timeline not being met by OAH that prolongs and delays the child's right to receive a Free And Appropriate Education. I know first hand of the cost of providing my child a safe learning environment at a certified NPS while we were going through the steps provided by IDEA 1997, procedural safeguards. By the time we had a signed settlement agreement, we had already spent over \$20,000. If this had not settled quickly, our family would have faced bankruptcy, or leaving the state to ensure my child's right to a Free And Appropriate Education.

12. Many of the families that I have assisted could not have afforded the cost that we had occurred through due process. Any delays over the 45-day time line will impact parents financially and emotionally and potentially leaving the child without the benefit of education.

13. Another area of concern that was brought up was the failure of CDE to provide a list of free or reduced cost representatives to parents. Many of the parents that I currently assist do not have the financial means to afford the cost of an Attorney. I contacted Shane by e-mail and phone asking that CDE help restore a fair due process and the urgent need for low cost pro bono attorneys. He recommended that I contact PAI, which I did to seek low cost or Pro bono attorneys. I received e-mail from Michael Kluk, Senior Attorney dated February 6, 2008 noting of the shortage and difficulties of locating low cost or pro bono attorneys for my parents in the state. Again the parents that have the least cannot receive the help that they need from CDE to help them obtain FAPE for their child. At the OAH Advisory Committee Meeting on April 15, 2008, I was finally presented with the list of attorneys.

14. Another concern that was brought up was the failure of CDE in EC 3090 Procedures Manual. At that time I did not understand how important this Manuel is for the parents. It is noted that the contractor shall maintain a manual that describes the procedures of mediation and due process hearing. Said Manuel shall provide detailed guidance for parents as follows:

- a) How to file a due process complaint, including suggestions on filing a complaint
- b) Describes mediation, how to prepare for mediation and participate in mediation
- c) Properly communicates with the hearing office and other parties
- d) How to compel attendances of witnesses and compel production of documents
- e) How to prepare for a due process hearing
- f) Proper presentation of evidence
- g) All applicable statutes and regulations
- h) How to file and serve pre-hearing motions and
- i) How to research and locate special education decisions issued by the contractor.

CDE's failure to provide this manual does prohibit parents under IDEA U.S.C. 1400(d) Purposes. The purposes of this title are- (B) to ensure that the **rights of children with disabilities and parents of such children are protected.** Idea 300.600 (a) **The State**

must monitor the implementation of this part, enforce this part in accordance with 300.604(a)(1) and (a)(3)(b)(2)(i) and (b)(2)(v), and (c)(2), and annually report on performance under this part. CDE has failed over and over to protect the rights of children and their parents as noted in OAHs annual reports.

15. Since meeting with CDE on September 11, 2007 I have written letters to Honorable Susan Davis dated January 28, 2008, Senator Mark Wyland dated January 28, 2008, Honorable Duncan Hunter dated January 28, 2008, Assemblymember George Plescia dated January 28, 2008, Ms. Ruth Ryder, Div. Director U.S. Department of Education dated February 6, 2009, Ms. Margaret Spelling Secretary of Education dated February 7, 2008 asking for help to remedy this situation to restore the rights for children and parents.

16. I also met with Mr. Harrison assistant to Duncan Hunter on February 8, 2008 to discuss my concerns with the interagency agreement No. 4427 dated May 25, 2005. I asked for clarification of IDEA to seek help to remedy this situation by restoring Secretary review into IDEA 2004.

17. On March 20 and 21, 2008 I went to Sacramento to bring my concerns about the lack of due process and CDE's failure to monitor the interagency agreement with OAH with the Advisory Commission on Special Education. This Commission is required to receive data from OAH and CDE, and includes as a commissioner, Mary Hudler, California's liaison to the U.S. Department of Education. At the March 20 and 21, 2008 meeting, I gave all the commissioners copies of the interagency agreement and the most recent reports from OAH concerning the percentage of parents prevailing in due process. I challenged them to help me restore a fair due process in our state. The commissioners indicated that they had been attempting to obtain this information from CDE for two years, and were unsuccessful. The commissioners seemed shocked at only 8% of students completely prevailing. The agenda for this meeting is attached as Ex. A.

18. On April 15, 2008 I went to the Special education advisory committee meeting that was held in Santa Ana. This is a different committee from the Advisory Commission on Special Education. The Advisory Commission provides oversight of CDE and OAH, the advisory committee gives advice to OAH as to how to improve the process. I was appalled to see that OAH in the 3 years of this interagency agreement, had yet to have an Advisory committee that is made up of stakeholders. They had not written a manual to help parent with understanding or filing a due process and they were just announcing how attorneys and advocates could be added to their list of low cost attorney and advocate list. At this meeting OAH was also still seeking advice on how to comply with the 45-day rule.

19. On April 16, 2007 I went with Ms. Dowd to discuss our concerns with Due process with Andrew Mudryk of Protection and Advocacy (PAI). We are still waiting to hear back from them due to the amount of information that we shared with them concerning this interagency contract and the lack of due process.

20. On April 17, 2008 I spoke to Barbara Thomas from the US. Department of Education in which she recommended that if file a complaint with CDE with my concern of OAH and CDE's misuse of Federal funds. I faxed a 28-page complaint to CDE on April 18, 2008.

21. On April 17, 2008 I also made an appointment to meet with Ms. Mary Hudler the Director of Special Education on May 23, 2008. I will be attending this meeting with a

few student representatives in hopes of preventing OAH from receiving another interagency contract for due process. I also have plans to speak at the May 22 and 23 advisory meeting.

22. In participating in 2 or more IEPs weekly with parents and districts I have noticed that my past comments of IEP's becoming an environment to intimidate, and ostracize the parents has been proved again and again. It was noted in OAH case No. N20050004; that the working relationships between parents and school personnel have been less than optimal for Student. I have many cases where the educational benefit for the student has been less than optimal. Parents have no recourse due to the state of our procedural safeguards.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 21th day April 2008 at San Diego, California.

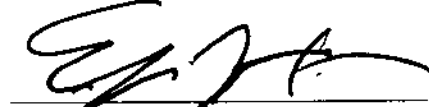

Dayon Higgins

EXHIBIT A

State of California

Governor

Arnold Schwarzenegger,

**THURSDAY, March 20, 2008
FRIDAY, March 21, 2008
CALIFORNIA DEPARTMENT OF EDUCATION
1430 N STREET
ROOM 1101, STATE BOARD MEETING ROOM
SACRAMENTO, CA 95814
(916) 445-4602**

ADVISORY COMMISSION ON SPECIAL EDUCATION

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<http://www.cde.ca.gov/sp/se/as/acse.asp> (Commission Web site)

<http://www.cde.ca.gov/sp/se> (Special Education Division Web site)

March 2008 Agenda

COMMISSIONERS		
PUBLIC MEMBERS		
Stacy Begin	Angela Hawkins	Don Shalvey, Chair
Patty Boyle	Judith Holsinger	Laureen Sills
Susan Brooks	Fern Laethem	Jim Woodhead
Diane Fazzi	Janet Mangini	Kristin Wright, Vice-Chair
Morena de Grimaldi	Laurie Newton	
STUDENT MEMBERS	LEGISLATIVE MEMBERS	
Eddie Rea	Betty Karnette, Assembly	
Dani Anderson	Joe Simitian, Senate	
GOVERNOR'S OFFICE OF THE SECRETARY FOR EDUCATION LIAISON		
Vacant		
STATE BOARD OF EDUCATION LIAISON		
Yvonne Chan		
DEPARTMENT OF EDUCATION / SPECIAL EDUCATION STAFF		

Mary Hudler, Director
Special Education Division
Anthony Sotelo, Staff Liaison

Ronald Kadish, Director
State Special Schools Liaison
Beverly York, Commission Secretary

To ensure that the Commission meets the auxiliary aids and service requirements of the Individuals with Disabilities Education Act and Title 2 of the *Americans with Disabilities Act of 1990* - 28 CFR 35.160(B)(2), ***requests for accommodation should be made to the Commission ten (10) days, in advance, of the scheduled meeting date.*** Wheelchair access is provided at all meetings. Call (916) 445-4602. The agenda is also available as a link from the Web site at: <http://www.cde.ca.gov/sp/se/as/acse>.

All times listed in this agenda are approximate and are provided for convenience only. The order of business may be changed without notice. Any matters deferred from the previous day's meeting may be considered the following day.

The Commission encourages clear communication. The Commission requests that individuals avoid the use of acronyms.

Public Comment/Input is invited on any matter under the jurisdiction of the Commission. Comments related to agenda items are made during discussion of the item. Comments regarding items not included on the printed agenda are made under the public comments section of the agenda. Depending on the number of individuals wishing to address the Commission, the presiding officer may establish specific time limits on presentations. Individuals wishing to provide public input to the Commission are requested to bring twenty-five (25) copies of their presentation to the meeting.

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ADVISORY COMMISSION ON SPECIAL EDUCATION

OPERATIONS & PLANNING COMMITTEE MEETING

Thursday, March 20, 2008
9:00 a.m. - 9:30 a.m.
Room 1101, State Board Meeting Room
1430 N Street
Sacramento, CA 95814

For information, call (916) 445-4602

**ADVISORY COMMISSION ON SPECIAL EDUCATION
THURSDAY, MARCH 20, 2008; 9:00 A.M. – 6:00 P.M.
CALIFORNIA DEPARTMENT OF EDUCATION
1430 N STREET
ROOM 1101, STATE BOARD MEETING ROOM
SACRAMENTO, CA 95814**

TIME		AGENDA ITEMS
9:00 a.m.	9:30 a.m.	Operations and Planning Committee Meeting
9:30 a.m.	10:00 a.m.	Pledge of Allegiance Roll Call & Changes to Agenda Approval of January and February 2008 Minutes Commissioners' Reports and Announcements
10:00 a.m.	11:00 a.m.	INFORMATION: Transitions and Transitions Booklet: <u>Cid Van Coersel</u> ; Warmline Family Resource Center
11:00 a.m.	11:15 a.m.	Break
11:15 a.m.	11:30 a.m.	ORGANIZATION INPUT COALITION BUILDING: Representatives of the following organizations are invited to address the commission on issues of concern: CARS+, CSHA, CASP, CTA, PTA, SEACO, SELPA, and other groups
11:30 a.m.	12:15 p.m.	PUBLIC INPUT: ACSE is seeking input from the field regarding transitions and outcomes for students receiving Special Education services.
12:15 p.m.	1:30 p.m.	Lunch (Commissioners who elect to review covers for Annual Report to attend lunch meeting with Mary Grady)
1:30 p.m.	2:00 p.m.	INFORMATION: Commission on Teacher Credentialing Recommendations: <u>Jan Jones-Wadsworth</u> , Commission on Teacher Credentialing
2:00 p.m.	2:15 p.m.	INFORMATION/ACTION: Teacher Appreciation: <u>Laurie Newton</u> , Commissioner, Advisory Commission on Special Education
2:15 p.m.	3:00 p.m.	INFORMATION and planning: GOAL Award: <u>Don Shalvey</u> , Chair, Advisory Commission on Special Education (ACSE)
3:00 p.m.	3:15 p.m.	BREAK
3:15 p.m.	3:45 p.m.	DISCUSSION/ACTION: Response To Intervention Letter: <u>Don Shalvey</u> , Chair, Advisory Commission on Special Education
3:45 p.m.	4:00 p.m.	INFORMATION: Legislative Update: <u>Allison Smith</u> , Special Education Consultant, California Department of Education
4:00 p.m.	6:00 p.m.	LEGISLATIVE COMMITTEE MEETING: Advisory Commission on Special Education
6:00 p.m.		ADJOURN

**ADVISORY COMMISSION ON SPECIAL EDUCATION
FRIDAY, MARCH 21, 2008; 8:30 A.M. – 3:00 P.M.
CALIFORNIA DEPARTMENT OF EDUCATION
1430 N STREET
ROOM 1101, STATE BOARD MEETING ROOM
SACRAMENTO, CA 95814**

TIME		AGENDA ITEMS
8:30 a.m.	9:00 a.m.	Pledge of Allegiance Roll Call Commissioners' Reports and Announcements Student Commissioners' Report
9:00 a.m.	9:15 a.m.	SPECIAL EDUCATION DIVISION REPORT: <u>Mary Hudler</u> , Director, Special Education Division, California Department of Education
9:15 a.m.	9:30 a.m.	ACTION ITEM: 2008-2009 Meeting Calendar Setting
9:30 a.m.	10:00 a.m.	INFORMATION: Transitions for students with low incidence disabilities attending State Special Schools: <u>Ron Kadish</u> , Director, State Special Schools and Services Division
10:00 a.m.	10:15 a.m.	Break
10:15 a.m.	11:00 a.m.	INFORMATION/ACTION: Legislative Committee Update: <u>Jim Woodhead</u> , Commissioner, Advisory Commission on Special Education
11:00 a.m.	11:45 a.m.	INFORMATION/ACTION: Advisory Commission on Special Education 2008 Annual Report: <u>Mary Grady</u> , Editor of <i>The Special Edge</i> , CalSTAT Special Project of the California Department of Education's Special Education Division
11:45 a.m.	12:00 a.m.	STATE BOARD REPORT: State Board of Education Report: <u>Jim Woodhead</u> , Commissioner, Advisory Commission on Special Education (ACSE)
12:00 p.m.	1:30 p.m.	Lunch
1:30 p.m.	2:15 p.m.	PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA (By law the Commission may not take action at this meeting on any comments made but may put a topic on a future agenda for action)
2:15 p.m.	3:00 p.m.	AGENDA Building May 2008 ACSE Meeting
3:00 p.m.		ADJOURN